

**PROSECUTION STAFF REPORT  
FOR ADOPTION OF  
CLEANUP AND ABATEMENT ORDER  
AND MONITORING AND REPORTING PROGRAM  
NO. R5-2008-XXXX  
FOR  
MR. FRANK GUINTA AND MS. SHARI GUINTA,  
AND MR. JAMES RAMSEY AND MS. MARILYN RAMSEY  
FRANKS ONE STOP  
SAN JOAQUIN COUNTY**

***Introduction***

Mr. Frank Guinta and Ms. Shari Guinta, and Mr. James and Ms. Marilyn Ramsey, (hereafter collectively known as the Dischargers) have failed to clean up and abate the discharge of petroleum hydrocarbon products at Frank's One Stop (AKA Frank's Exxon #3) located at 2072 West Yosemite Avenue in Manteca, San Joaquin County (Site), as required under the 18 August 2003 Cleanup and Abatement Order (CAO) No. R5-2003-0713 and Monitoring and Reporting Program (MRP) No. R5-2003-0713. The purpose of proposed Cleanup and Abatement Order and Monitoring and Reporting Program No. R5-2008-XXXX is to update the findings in a new, and enforceable CAO, set new due dates for investigation and cleanup, and reflect current site conditions. Water Board staff believe that the new CAO and MRP are necessary to ensure that the Dischargers mitigate the effects of the contamination and restore the beneficial uses of local groundwater.

On 2 May 1992 San Joaquin County Environmental Health Department (SJCEHD) submitted an Unauthorized Release (Leak) Report for a gasoline leak discovered at the Site fuel dispensers during an inspection. At that time, the Site was under the ownership of Mr. James and Ms. Marilyn Ramsey, and the underground storage tanks (USTs) were operated by Mr. Frank Guinta. SJCEHD directed the Dischargers to investigate the release. SJCEHD had previously discovered inconsistencies in prior monthly reconciliation reports of fuel supplies delivered to the USTs versus sales of petroleum products, a potential indicator of a leaking UST system. The dispensers were repaired but the investigation was not conducted.

***Investigations and Remediation***

On 16 September 1994, three 1,000-gallon USTs reportedly containing used motor oil were removed from the Site per SJCEHD directive. Total Petroleum Hydrocarbons (TPH) as Motor Oil (TPHmo), 150,000 in parts per billion (ppb) in soil as micrograms per kilogram ( $\mu\text{g/kg}$ ) and TPH as Diesel (TPHd), 29,000  $\mu\text{g/kg}$  were detected in soil samples from the excavation.

On 20 September 1994 one waste oil UST was removed per SJCEHD directive. Metals (including Lead) were detected in soil samples from the excavation.

In February 1995, prior to, and as a part of, the purchase of the bank note for the Site by Mr. Guinta, the Bank of Stockton hired consultant Geological Audit Services Inc., to perform a soil and groundwater investigation that resulted in the 28 March 1995 *Preliminary Investigation and Evaluation Report (PIER)*. The *PIER* reported soil contamination and groundwater pollution from the dispenser release, and from the USTs. Maximum concentrations detected in soil were: TPH as Gasoline (TPHg), 1,400,000  $\mu\text{g/kg}$ ; benzene, 2,500  $\mu\text{g/kg}$ ; toluene, 4,400  $\mu\text{g/kg}$ ;

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ethylbenzene, 2,400 µg /kg; and xylenes, 8,300 µg /kg. Maximum grab groundwater concentrations were: TPHg, 13,000 µg/L; TPHd, 2,500 µg/L; TPHmo, 110 µg/L; benzene, 83 µg/L; toluene, 840 µg/L; ethylbenzene, 230 µg/L; and xylenes, 1,900 µg/L. Samples were not analyzed for Methyl Tert-Butyl Ether (MTBE). Samples were not analyzed for Methyl Tert-Butyl Ether (MTBE).

Additional soil borings advanced in April 1997 and May 1998 confirmed releases of TPHg; TPHd; benzene; ethylbenzene; toluene; xylenes; and fuel oxygenates, including MTBE and tertiary butyl alcohol (TBA), in soil and groundwater.

During the May 1998 investigation in the area of the former waste oil tank, tetrachloroethylene (PCE) was detected in soil beneath, and adjacent to, the waste oil tank excavation. In a letter dated 20 August 1998, SJCEHD directed the Dischargers to investigate the PCE detected in soil near the waste oil tank. Subsequently, PCE was detected in four groundwater monitoring wells on-site from May 1999 until September 2000, when analysis for PCE was discontinued with SJCEHD approval.

In June 1998, Remedy Construction removed two 10,000-gallon diesel USTs and four 10,000-gallon gasoline USTs from the Site. During excavation, the SJCEHD noted hydrocarbon odors and photographed corrosion on the tanks and soil staining in the excavation. Soil and groundwater sample results confirmed the presence of TPHg, TPHd, benzene, and MTBE in the tank excavation.

Between May 1999 and September 2000, Frank Guinta's consultant installed twenty monitoring wells (MW-1 through MW-20) and five piezometers (P-1 through P-5). Monthly hand bailing removed free product from two monitoring wells (MW-5 and MW-6) and one piezometer (P-4).

The existing extent of the groundwater monitoring network does not adequately characterize vertical and lateral extent of the plume. Currently the off-site monitoring wells are located to the north within 200 feet of the Site, while the MTBE plume impacts to domestic supply wells extend over 600 feet to the north of the Site. Since December 2004, water analyses from two domestic wells approximately 400 feet to the south of the Site have reported sporadic low level (<5 ug/L) groundwater impacts from MTBE. CAO No. R5-2003-0713 required that an adequate investigation be performed and additional monitoring wells be installed to characterize the vertical and lateral extent of the petroleum hydrocarbons plume.

From 1999 to 2002, the maximum concentrations of pollutants in groundwater were reported as:

Constituent	Maximum Concentration (µg/L)	Numerical Water Quality Limits (µg/L)
Total Petroleum Hydrocarbons as gasoline	280,000	5 <sup>1</sup>
Total Petroleum Hydrocarbons as diesel	97,000	100 <sup>1</sup>
Benzene	1,500	0.15 <sup>2</sup>
Ethylbenzene	4,500	3.2 <sup>3</sup>
Toluene	18,000	42 <sup>1</sup>
Xylenes	25,000	17 <sup>1</sup>

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Methyl Tertiary Butyl Ether (MTBE)	16,000	5 <sup>1</sup>
Tertiary Butyl Alcohol	21,000	12 <sup>4</sup>
1,2 Dichloroethane (1,2-DCA)	1.1	0.4 <sup>2</sup>
1,2-Dichloropropane (1,2-DCP) <sup>5</sup>	4.5	0.5 <sup>2</sup>
Naphthalene	87	21 <sup>1</sup>
Tetrachloroethylene (PCE)	26	0.06 <sup>2</sup>

1 - Taste & Odor Threshold    2 - California Public Health Goal    3 - California Cancer Potency Factor

4 - California State Action Levels    5 - a component used in the manufacture of unleaded gasoline, found in monitoring wells, the onsite supply well, and domestic wells

In August 2000, one groundwater extraction well and one air sparge well were installed to conduct a pilot study to determine the feasibility of using these technologies at the Site. In September 2000, one additional extraction well was installed, three piezometers (water level wells) were converted to extraction wells, and the groundwater pump and treat (GWP&T) system began operating at the Site as an interim remedial action.

In a letter dated 6 September 2001, the SJCEHD approved a Remedial Action Plan (RAP) consisting of soil vapor extraction/air sparging (SVE/AS), additional recovery wells for the interim GWP&T system, and domestic wellhead treatment. In February 2002, the Site's interim groundwater extraction system was turned off, in conjunction with the startup of the SVE/AS system, per the approved RAP. By August 2002, TPHg and MtBE concentrations began to increase in both groundwater and the influent air of the SVE/AS system. MTBE concentrations also began to increase in the domestic well located at 17950 Airport Way, immediately north across Yosemite Avenue and hydraulically downgradient of the Site (closest domestic well). Subsequently, SJCEHD's California licensed professional geologist created geologic cross sections from the Cone Penetrometer Testing logs and noted that the second sand unit of the water bearing zone between 30 and 60 feet depth is not currently monitored by monitoring wells, which may represent a migration pathway to the MTBE-impacted domestic wells. SJCEHD noted that an investigation of the second sand unit was warranted.

### **Residential Supply Wells Impacts**

In December 1999, forty-six (46) water supply wells were identified within a half-mile of the Site. In July, August, and September 2000, groundwater from thirty-eight domestic and two irrigation wells was sampled under written direction of SJCEHD (17 May 2000). Of the forty wells initially sampled, petroleum hydrocarbons, including MTBE, 1,2-DCA and 1,2-DCP were detected in thirteen residential supply wells (12 domestic and 1 irrigation). Subsequently 22 wells were included in the quarterly monitoring program. This information and Site quarterly groundwater monitoring reports from 2000 to 2008 show that the petroleum hydrocarbons plume had migrated across West Yosemite Avenue to the north and northwest over 600 feet from the Site (and to the south by December 2004). Available information indicates that most of the residential supply wells are screened through the shallow to intermediate water bearing zone (40 to 60 feet below ground surface).

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On 3 August 2000, the SJCEHD notified Water Board staff that residential supply wells were impacted by MTBE, 1,2-DCA and 1,2-DCP. Subsequently, in a letter dated 14 August 2000 and after discussion with the SJCEHD, Water Board staff required the following:

- an interim groundwater extraction system be installed within 30 days to address the MTBE,
- notification of MTBE impacts to groundwater and provision of an alternative water supply be given to all domestic well owners, and
- continuation of the remedial investigation.

The Dischargers started interim ground water extraction, notified impacted residential supply well owners, and provided bottled water to residents within the required time.

On 16 August 2000, SJCEHD and Water Board staff met with City of Manteca Public Works (City of Manteca) to discuss installation of a public water supply and sanitary sewer line for the City of Manteca and unincorporated area residents impacted by the petroleum hydrocarbons plume. The installation of a sanitary sewer line is required by San Joaquin County for new public water supplies, due to the close proximity of the active private septic systems. The City of Manteca estimated a cost of approximately \$2,000,000 to construct a public water supply system and a sanitary sewer service to residents. Time to annex and connect public water supply system and sanitary sewer service was estimated to take up to two years. As a result of this meeting, SJCEHD decided to supply bulk water in tanks in the short term, until completion of construction of the wellhead treatment systems provided a long-term solution. In 2005, the City of Manteca annexed the unincorporated area neighborhood but has not provided connections to public water supply system and sanitary sewer service. The City of Manteca has stated that they do not have plans to upgrade services within the next ten years, and if so, would require the landowners to pay for the water and sewer connections.

In September 2000, 12 residential supply wells impacted by Petroleum Hydrocarbons were disconnected from the residences. Bulk water supply tanks were installed at each home as a temporary water supply. The MTBE groundwater plume was reported in the media as the largest plume in San Joaquin County.

By January 2002, 11 residential supply wellhead treatment systems were installed (one owner refused treatment) to protect public health at residences with impacted wells. Residential supply wellhead treatment consists of two or three granulated activated carbon (GAC) units connected inline between the well and the domestic user.

### **Cleanup and Abatement Order**

Work progressed until 1 January 2003, at which time Frank Guinta's consultant turned off the SVE/AS system and stated, in a letter dated 15 January 2003, to SJCEHD and Water Board staff, that inadequate State Cleanup Funds (<\$50,000 of the allotted \$1,500,000) remained in the State Water Resources Control Board UST Cleanup Fund (State funds) account to operate the remediation system, conduct groundwater monitoring, and maintain domestic wellhead

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treatment systems. The letter also stated that remaining State funds would allow maintenance and sampling of the residential supply wellhead treatment systems to continue for approximately one year.

In a letter dated 25 February 2003, SJCEHD directed Frank Guinta to restart both the soil and groundwater treatment (SVE/AS) system within 10 days, and to resume quarterly groundwater monitoring. Water Board staff concurred with SJCEHD that operation of the SVE/AS treatment system was necessary to properly and effectively remove waste constituents and to reduce petroleum hydrocarbons concentrations in the downgradient residential supply wells resulting from off-site plume migration, and that quarterly groundwater monitoring was necessary to track the extent of the petroleum hydrocarbons plume. Frank Guinta failed to meet the SJCEHD deadline, and in March 2003, the Water Board obtained lead agency status from SJCEHD. On 3 April 2003, Water Board staff mailed the first draft Cleanup and Abatement Order to Frank Guinta and Guinta Enterprises, and requested a meeting.

Subsequently, in a meeting on 9 April 2003 with Water Board and SJCEHD staff, Frank Guinta's representatives John Guinta (his son) and Don Thompson (his environmental manager), and Frank Guinta's consultant AquaScience Engineers Inc., agreed to resume quarterly monitoring, restart the SVE/AS system and reevaluate the need for the interim GWP&T system. Frank Guinta's representatives also stated that Ms. Shari Guinta, and Mr. James and Ms. Marilyn Ramsey, as former owners of the Site at the time of the unauthorized release, should be included in the CAO. A second draft CAO was issued on 30 April 2003.

On 18 August 2003, the Water Board Executive Officer issued CAO No. R5-2003-0713 (CAO) and MRP No. R5-2003-0713 to Frank and Shari Guinta, Guinta Enterprises, and to James and Marilyn Ramsey.

Groundwater monitoring resumed on 3 May 2003 and the SVE/S system was restarted on 13 May 2003. The SVE/AS system operated until declining soil gas concentrations justified treatment shutdown in December 2003. Compliance with the CAO continued until 1 February 2004, when the Dischargers failed to meet the Water Board staff deadline to submit an additional Site Characterization Report for the petroleum hydrocarbons groundwater plume. At that time Mr. Guinta and his representatives began requesting a series of extensions to the CAO, to allow Mr. Guinta additional time to secure a loan to fund the cleanup.

In 2004 and 2005, Mr. Guinta repeatedly asked staff, verbally and in writing, for site closure. The rationale given for each request was to facilitate the sale of the property or to obtain funding for the cleanup. Staff denied the closure request, stating that to do so would relieve the Dischargers from the responsibility for the cleanup.

On 16 November 2004 after the last extension had expired, the UST Program Manager issued a Notice of Violation to the Dischargers for failure to submit reports per the CAO and requested a meeting with Frank Guinta by 3 December 2004. During the meeting on 3 December 2004 with Frank and John Guinta, and his consultant AquaScience Engineers, Inc., Frank Guinta agreed

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to comply with the CAO and schedule fieldwork for the additional site characterization by January 2005. On 31 January 2005, Frank Guinta notified Water Board staff in writing that no further work would be funded by him until the property was sold. To date, the property has not sold and the Dischargers have not conducted the work required by the CAO.

As a result of the Dischargers failure to continue the work required under the CAO and to protect human health, Water Board staff, with Executive Officer approval, obtained funding through the State Water Resources Control Board (State Board) Emergency Abandoned and Recalcitrant (EAR) Account program. Water Board staff contracted verbally to maintain and sample the residential supply well treatment systems as necessary, and continued sampling the 26 residential supply wells affected by or near the petroleum hydrocarbons plume. In 2007, the State Board expanded the EAR Account emergency funding to include the State competitive bidding process and hired a contractor to conduct the work. Corrective action activities (Site groundwater monitoring, supply well sampling and wellhead treatment maintenance, additional investigation, etc.) at the site are being performed by the State's contractor through the EAR Account funding under State Board and Water Board staff oversight.

In December 2005 the Executive Officer issued an Administrative Civil Liability Complaint (ACLC) to the Dischargers for failure to comply with the CAO. At the Board meeting on 27 October 2006, the Board held an evidentiary hearing to consider the ACLC. During the hearing, James Ramsey claimed that he had not received notice of the 2003 CAO until the ACLC had been issued. Frank Guinta claimed at the hearing that he did not have sufficient funds to conduct the work, that another unspecified gas station across the street to the north of the Site caused the pollution, and that Guinta Enterprises never operated the gas station. Following the close of the hearing, the Board dismissed the ACLC without prejudice and did not adopt the proposed ACL Order.

Water Board staff subsequently researched County records for evidence of another gas station to the north and downgradient from Frank's One Stop, and found no records pertaining to the above claim. Water Board staff interviewed several long-time residents of the neighborhood, who did not indicate the presence of another gas station between the Site and the polluted wells. The City of Manteca Fire Department staff indicated, although there were no City records, that a Standard Oil station existed on the northwest corner of Yosemite Avenue and Airport Way until demolished the middle 1960's, which predates the use of MtBE in California. Chevron did not have records for the Standard Oil station. Moreover, the analytical data indicate that Frank's One Stop, not an offsite gas station, is the source of the pollution impacting the residential supply wells. To date, the Dischargers have not submitted information to support their claim of another source.

Water Board staff met with the Dischargers on 27 November 2007 to discuss compliance with the CAO. The Dischargers did not agree to resume work at that time, but did agree to provide a letter stating their intent. In a letter dated 12 December 2007, the Dischargers stated that they could not comply with the CAO due to the cost of the cleanup. Subsequent requests and

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attempts to schedule a meeting to discuss a new cleanup and abatement order have resulted in numerous cancellations by the Dischargers and/or their attorneys.

To date, the Dischargers have failed to: (1) conduct maintenance of the treatment systems, (2) submit technical reports, (3) define the vertical and lateral extent of groundwater pollution, and (4) submit a corrective action plan as required by the 2003 CAO. Petroleum hydrocarbons in groundwater continue to exceed Water Quality Goals at the Site and in pre-treatment water at residential supply wells.

The Amended CAO required that staff conduct the California Environmental Quality Act (CEQA) negative declaration process to completion. The CEQA process was initiated 3 June 2008 and closed 1 July 2008 without adverse comments.

### ***Summary***

The failure to maintain the residential supply well treatment systems and submit the technical reports has grave consequences, as the lack of action without State intervention may lead to additional degradation of the groundwater and potential threats to public health and the environment. Staff recommends that the Water Board rescind the 2003 CAO and adopt the new CAO and MRP No. R5-2008-XXXX.